

BULLETIN 93-4

TO: All Property/Casualty Companies Writing Auto
Warranty Contracts

FROM: Glenn Pomeroy, Commissioner

DATE: August 9, 1993

SUBJECT: Automobile Warranty Contracts

The purpose of this bulletin is to provide property/casualty companies the Department's interpretation of North Dakota statutes, administrative rules, and practices involving automobile warranty contracts including mechanical breakdown/service contracts. This bulletin was prompted by questions surrounding the growing number of "administrator obligor" contracts used by auto dealers to address tax implications resulting from an Internal Revenue Service interpretation.

The following contracts are the scope of this bulletin:

1. Contracts issued by the manufacturer or dealer (generally at the point of auto sale), including those assigned to or issued as "administrator obligor" contracts.
2. Contracts between the insurance/warranty company and the dealer normally referred to as a "contractual liability" or "reimbursement" contract.
3. Contracts between the insurance/warranty insurance company sold directly to a consumer (may or may not have a third-party administrator (TPA) involved and does not involve a dealer).

Though there have been no questions that the contracts identified in Nos. 2 and 3 above are contracts of insurance over which the

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Department has regulatory authority, the Department has received questions relative to interpretation of contracts identified in No. 1. These contracts are discussed below.

N.D.C.C. § 26.1-40-18 states:

An automobile warranty issued by anyone other than the automobile manufacturer or dealer is a contract of insurance and all warranties must be on a contract form prescribed or approved by the commissioner.

Under this statute, warranty contracts between the automobile dealer and the consumers are generally not deemed to be insurance contracts. However, if a dealer uses an "administrator obligor" contract which makes a third party the obligor, or if the contract is assigned to a third party, the contract would be deemed a contract of insurance by the Department. Therefore, since these "administrator obligor" contracts are contracts of insurance, they are subject to regulation by the Insurance Department. This would include review of the activity involved of both the dealer and the administrator in the transaction. To comply with North Dakota law, all contracts involving the administrator, the dealer, and the consumer must first be submitted to the Insurance Department for approval, including rates charged and forms issued to the consumer. For purposes of this bulletin, "consumer" means the purchaser of a vehicle other than a dealer.

N.D.C.C. § 26.1-40-18 does not provide a specific definition for "manufacturer". The Department has interpreted "manufacturer" to mean the entity responsible for the manufacturing, sales, marketing, and distribution of an automobile. "Manufacturer" would not include an insurance company even though it may be a subsidiary of an automobile manufacturer.

Any company offering automobile warranty insurance in this state must hold a Certificate of Authority to engage in the business of insurance from the State of North Dakota and must comply with all laws applicable to insurance companies including the minimum capital and surplus requirements. In addition, such companies must also file with the Commissioner a cash surety bond in the sum of \$100,000 on the form prescribed by the Commissioner pursuant to N.D.C.C. § 26.1-40-20.

Based on the interpretations contained in this bulletin, the following requirements shall apply:

1. Any person or entity which has issued or proposes to issue an "administrator obligor" contract based on the assumption that such contracts are not required to be filed with the Insurance Commissioner's office prior to use must immediately discontinue issuing or offering such contracts.
2. Any "administrator obligor" contracts issued and in effect which were not approved by the Commissioner's office prior to issuance must be amended to the "dealer obligor" format by endorsement by November 1, 1993.
3. Any person or entity desirous of offering for sale the "administrator obligor" contracts in the future must, prior to offering such insurance contracts for sale, file with the Department for the approval of the complete program including rates charged to the consumer and forms issued to the consumer.

Any person or entity found not to be in compliance with North Dakota law, including the requirements set out above, may be subject to administrative action.

GP/njb